

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | File No. EB-00-BS-106 |
| Radio One Licenses, Inc. |) | |
| |) | NAL/Acct. No. 20013226001 |
| Licensee of Station WBOT(FM) |) | |
| |) | FRN 0003-7390-34 |
| Brockton, Massachusetts |) | |

MEMORANDUM OPINION AND ORDER

Adopted: January 28, 2002

Released: January 31, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* ("Order") we deny a Petition for Reconsideration filed by Radio One Licenses, Inc. ("Radio One"), licensee of WBOT(FM), of the *Forfeiture Order*¹ issued by the Enforcement Bureau ("Bureau") assessing a twenty-one thousand five hundred dollar forfeiture (\$21,500) against Radio One for willful violation of the following Sections of the Commission's Rules ("Rules"): 11.35(a) (failure to have operational Emergency Alert System ("EAS") equipment); 73.1125(e)² (failure to establish a local or toll-free telephone number in the community of license); 73.1350(c)(1) (failure to establish monitoring procedures to determine compliance with Section 73.1560 regarding operating power); 73.1800(a) (failure to maintain a station log); and 73.3526(a)(2) (failure to maintain a public inspection file).³

II. BACKGROUND

2. On March 14, 2000, the Commission's Boston, Massachusetts Field Office ("Boston Office") conducted an inspection of radio station WBOT(FM) in Brockton, Massachusetts, after it received information indicating that WBOT may have been in violation of the main studio rule. The inspection revealed ten different rule violations. On March 28, 2000, the District Director of the Boston Office issued a Notice of Violation ("NOV") for the violations. On March 8, 2001, the District Director

¹ *Radio One Licenses, Inc.*, 16 FCC Rcd 15326 (Enf. Bur. 2001).

² Effective May 20, 2000, Section 73.1125 of the Rules was amended and the subsections were, consequently, reordered. At the time the March 28, 2000 NOV was issued, the Rule and subsection that was violated was 73.1125(d). With the amendment to and restructuring of Section 73.1125, the subsection that was violated is now 73.1125(e). For clarity, we will refer to this violation as a violation of Section 73.1125(e) of the Rules throughout this document.

³ 47 C.F.R. §§ 11.35(a), 73.1125(e), 73.1350(c)(1), 73.1560, 73.1800(a), 73.3526(a)(2).

of the Boston Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL")⁴ in the amount of \$22,000 for the aforementioned violations. After being granted an extension of time to respond to the NAL, Radio One submitted its response to the Commission on May 1, 2001. In its response, Radio One acknowledged, with explanation, that all of the violations occurred except the public file violation, which it disputed. Nevertheless, Radio One requested that all of the forfeiture amounts be cancelled and/or reduced. On August 14, 2001, the Bureau issued a *Forfeiture Order* in which it upheld the issuance of the NAL but reduced the forfeiture amount to \$21,500 because of Radio One's voluntary disclosure of its failure to establish a local or toll-free telephone number in its community of license.

III. DISCUSSION

3. On September 13, 2001, Radio One submitted a Petition for Reconsideration of the *Forfeiture Order*. In its Petition for Reconsideration, Radio One disputes that it violated Section 73.3526(a)(2) of the Rules and requests that the Bureau cancel the portion of the forfeiture assessed it for not having a public inspection file. Radio One does not dispute that it violated Sections 11.35(a), 73.1125(e), 73.1350(c)(1), and 73.1800(a). However, it requests that the portion of the forfeiture assessed for violation of these rules be cancelled or reduced for other reasons.

4. Regarding the public inspection file, Radio One maintains that the file has always been and remains at WBOT(FM)'s main studio. Further, Radio One states that, at the time of the inspection, the file was readily available during normal business hours to anyone who inquired of Radio One personnel at the main studio. Radio One sets forth no evidence in support of this assertion. In explaining why it did not provide evidence of a public inspection file to the investigating agent, Radio One asserts that perhaps the investigating agent did not ask for the public file at the main studio, since the agent initially perceived there to be no main studio at all. Alternatively, Radio One contends that maybe the investigating agent did not ask a Radio One employee for the file because WBOT(FM) shares facilities with another radio station.

5. As stated in our *Forfeiture Order*, the investigating agent asked for the public inspection file twice, first at the main studio and again at the transmitter site. It is true that the agent's initial perception was that WBOT(FM) lacked a meaningful management and staff presence at its studio. However, in response to the NOV, Radio One represented that Jane Gilson was the staff person at WBOT(FM)'s main studio and that she remained in attendance during normal business hours. Ms. Gilson and others were present at the main studio during the inspection of WBOT(FM). The agent asked for the public file during that inspection. The file was never made available to him. Furthermore, as stated in the *Forfeiture Order*, the investigating agent asked WBOT(FM)'s general manager, Mr. Tom Calococci, if WBOT(FM) had a public inspection file when they met at the transmitter site. Mr. Calococci responded, "not yet." Radio One does not dispute that Mr. Calococci told the investigating agent that WBOT(FM) did not have a public inspection file yet. Instead, Radio One argues that Mr. Calococci was at the transmitter site when the agent asked for the file and maintains that the file would have been provided if the agent had asked for it at the studio. We think it is irrelevant that Mr. Calococci was at the transmitter site when the agent asked him for the file. As the station manager, the person responsible for day-to-day operation of the station, he should have known whether or not the station had a public inspection file.⁵ In

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132260001 (Enf. Bur., Boston Office, released March 8, 2001).

⁵ In its response to the NOV, Radio One states that the public inspection file is available at Mr. Calococci's

any event, contrary to Radio One's speculative assertions, as noted in the *Forfeiture Order*, the agent did ask for the file at the main studio and it was not made available to him.

6. Radio One also contends that the Bureau has not met its burden of proof to levy a forfeiture for the public inspection violation. The Commission has concluded that the burden of proof in forfeiture proceedings is that of a preponderance of the evidence.⁶ The record in this proceeding indicates that the agent asked for the file twice and that it was not made available to him. Radio One has presented no evidence that it had a public inspection file at the time of the inspection. Moreover, Radio One has not presented any evidence supporting its assertion that the agent did not ask for the public inspection file. Contrary to Radio One's assertion, the Bureau has met its burden of proof by a preponderance of the evidence, and we affirm the issuance of the forfeiture for violation of Section 73.3526(a)(2) of the Rules.

7. In support of its contention that the Bureau should cancel or rescind the forfeiture amounts attributable to the violation of Rule Sections 11.35(a), 73.1125(e), 73.1350(c)(1), and 73.1800(a), Radio One reasserts the arguments it made in its response to the *NAL* and raises four new arguments. To the extent that Radio One is reiterating arguments made previously, no new evidence has been presented to persuade the Bureau to change its positions stated in the *Forfeiture Order*. However, we will examine the four new arguments raised. First, Radio One requests that the Bureau consider that WBOT(FM) was newly acquired at the time of the inspection. We do not find the fact that Radio One acquired WBOT(FM) five and one half months prior to the inspection a mitigating factor. The Commission has repeatedly held that it is the responsibility of a licensee to familiarize itself and comply with the applicable statutes and Commission rules and policies, regardless of the length of time in which it has been engaged in broadcasting. *Bay Television, Inc.*, 10 FCC Rcd 11509 (1995) (rejecting licensee's request for lenient treatment because it had been on the air for barely six months). Moreover, Radio One is an experienced broadcaster with over 20 years of experience. As an experienced broadcaster, it should be well aware of its responsibility to comply with the Commission's rules and policies.

8. Second, Radio One asks us to consider "other compelling public interest factors" in favor of eliminating, or substantially reducing the forfeiture. However, Radio One does not specifically identify what public interest factors it wants us to consider. Furthermore, we fully considered all of the factors set forth in Section 503(b) of the Communications Act of 1934, as amended, ("Act")⁷ in determining the appropriate forfeiture amount in this case.

9. Third, in support of its request for reduction, Radio One cites to *WLDI, Inc.*⁸ and *WVGO License Limited Partnership*,⁹ two cases in which forfeitures were reduced because the licensees exhibited an overall history of compliance with the Commission's Rules. Here, Radio One does not have a history of overall compliance with the Commission's Rules. Contrary to Radio One's assertion that prior NOV's

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⁶ See *Metromedia, Inc., et. al*, 60 FCC 2d 1075 (1976).

⁷ 47 U.S.C. § 503(b).

⁸ 16 FCC Rcd 9571 (Enf. Bur. 2001).

⁹ 12 FCC Rcd 5918 (MMB 1997).

are not relevant to its history of overall compliance, we have found that prior NOV's are factors in determining a licensee's overall history of compliance.¹⁰ Moreover, the Commission has considered the duration of a violation in determining whether a licensee has a history of overall compliance.¹¹ In this case, there was a prior NOV issued on November 18, 1999 to Radio One for three violations at WBOT(FM) a month and a half after it took ownership of the station. The March 14, 2000 inspection of WBOT(FM) revealed ten violations and resulted in a second NOV issued approximately four months after the first on March 28, 2000. Moreover, the EAS violation identified in the second NOV spanned a period of almost four months, in spite of the fact that Radio One had the EAS equipment on hand and uninstalled for at least two months of that time. In light of the fact that Radio One had two NOV's issued to it within a four-month period of time and considering the duration of the EAS violation, we do not find that Radio One has a history of overall compliance for its operation of this station and therefore we do not find a reduction of the forfeiture to be appropriate.

10. Finally, in further support of its request for reduction, Radio One cites to *State University of New York ("SUNY")*,¹² a case in which the Commission reduced a forfeiture where the licensee had taken remedial steps to correct violations, even though the licensee had been the subject of a prior enforcement action. In *SUNY*, the Commission reduced a \$23,750 forfeiture to \$4,200. The forfeiture had been assessed because of *SUNY*'s violation of 18 U.S.C. § 1464, which prohibits the broadcast of indecent material. The Commission generally does not nullify or mitigate forfeitures because remedial measures were taken to correct the violations.¹³ However, extenuating circumstances in the *SUNY* case led the Commission to conclude that a reduction of the forfeiture amount was warranted. Once *SUNY* became aware of the possible broadcast of indecent material, it took WSUC(FM) off the air pending an investigation, sent a letter of apology to the complainant, adopted new operating procedures, and instituted criminal proceedings against the employee responsible for the questionable broadcasts (for reasons unrelated to the broadcasts).¹⁴ By comparison, there are no such extenuating circumstances in this case as were present in the *SUNY* case.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 405 of the Act,¹⁵ and

¹⁰ See *Arnold Broadcasting Company*, 16 FCC Rcd 267 (Enf. Bur. 2001), *recon. granted in part for other reasons, and denied in part*, 16 FCC Rcd 13600 (2001) and *Crown Communication, Inc.*, 15 FCC Rcd 21937 (Enf. Bur. 2000) (both cases denying reduction of a forfeiture for history of overall compliance where the licensee had been issued multiple NOV's).

¹¹ See *Commercial Radio Service Corp.*, 16 FCC Rcd 3543 (Enf., Bur., Tech. & Pub. Safety Div. 2001) (denying a reduction for a history of overall compliance where the licensee had operated eleven specialized mobile radio stations without authorization over a five month period of time).

¹² *State University of New York*, 13 FCC Rcd 23810 (1998).

¹³ See *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

¹⁴ Additionally, notwithstanding a prior enforcement action, *SUNY* was determined to have an overall history of compliance. Based on the facts of this case, we have not found that Radio One has a history of overall compliance.

¹⁵ 47 U.S.C. § 405.

Section 1.106 of the Rules,¹⁶ Radio One's Petition for Reconsideration of the August 14, 2001, *Forfeiture Order* **IS DENIED** and the *Forfeiture Order* **IS AFFIRMED**.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹⁷ within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200132260001 and FRN 0003-7390-34. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

13. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Radio One Licenses, Inc., Davis Wright Tremaine LLP, Attention: Pamela C. Cooper, Esq., 1500 K Street, NW, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁶ 47 C.F.R. § 1.106.

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.